Filed 4/24/06 In re David H. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re DAVID H., a Person Coming Under the Juvenile Court Law.	
KEVIN C., Plaintiff and Appellant, v. DAVID H., Defendant and Respondent.	A109026, A110426 (Alameda County Super. Ct. No. J040031)

On August 13, 2003, plaintiff Kevin C. was convicted of attempted murder and related offenses, convictions which we affirmed in an unpublished opinion. (*People v. Craig* (Apr. 11, 2005, A104037.) The primary evidence supporting the convictions was the victim's identification of Kevin C. as the man who shot him. (*Id*. at pp. 2-3.) The defense was that the victim, David H., identified the wrong person. Kevin C.'s stepfather testified that Kevin C. had been home at the time the crime was committed. (*Id*. at p. 4.) Defense counsel suggested that David H. knew the man who shot him, but named defendant because he was afraid of the people who actually were involved. (*Id*. at p. 6.)

During the course of those proceedings, the prosecutor informed the court and defense counsel that David H. had a criminal history. As that history was contained in juvenile court records, it could be reviewed only by court order. (Welf. & Inst. Code, § 827.) Counsel never sought or obtained such an order. After the conviction, and during the pendency of the appeal, plaintiff, represented by new counsel, filed a petition

in the juvenile court seeking disclosure of any and all portions of David H.'s juvenile court records suggesting he had engaged in conduct of moral turpitude, asserting that those records could have been used to impeach him at trial. On November 8, 2004, the juvenile court, following an in camera review of the records, found good cause to produce two documents: An April 10, 1996 minute order finding David H. committed vehicle theft (Veh. Code, § 10851), and two pages from a January 1993 police report implicating David H. in the burglary of a classroom. On January 6, 2005, plaintiff appealed from the order on his petition to the extent it denied disclosure of any additional records.

In the meantime, on December 29, 2004, defense counsel filed a second petition seeking disclosure of juvenile records, asserting that the court may not have construed the original petition as broadly as counsel intended it to be construed. Counsel explained: "[Plaintiff] does not want just an investigative lead or two to get started. [Plaintiff] seeks *any and all* documents in [the victim's] juvenile court file that suggest, allege, describe or admit, whether in whole or in part, any circumstance relevant to providing [the victim's] moral turpitude conduct. [Plaintiff] seeks such broad and full disclosure to gain as full of an understanding as possible of [the victim's] moral turpitude misconduct in order to properly investigate it." Counsel complained, for example, that the "admission as a juvenile to the driving and taking, in and of itself, cannot be used to impeach [the victim] because it is not tantamount to a *felony* . . ., which is the subject of an enumerated exception to the hearsay rule . . . . [Plaintiff] therefore needs more information in order to prove the misconduct. The portion of the reporter's transcript wherein [the victim] admitted the driving and taking would be of great assistance because if he denied the driving and taking, he could be impeached with his own admission as a prior inconsistent statement." On April 4, 2005, the juvenile court found good cause to produce several additional documents: A minute order of David H.'s admission to the vehicle theft, the petition charging David H. with the theft of a motorcycle, the statement of the police officer who arrested David H. for that offense, the petition charging David H. with the burglary of the classroom, a misdemeanor, and two additional pages of the police report

concerning that offense. Plaintiff also appeals from this order of production to the extent it denied disclosure of any additional records.[1] We have consolidated the appeals.

DISCUSSION

Appealability

An order on a petition to review juvenile court records is appealable as a final judgment in a special proceeding. (*In re Keisha T.* (1995) 38 Cal.App.4th 220, 229.)

I.

Defendant's Right to Review Juvenile Court Records

The Legislature has stated its intention that juvenile court records, in general, be kept confidential. (Welf. & Inst. Code, § 827, subd. (b).) The policy of confidentiality, however, is not absolute. Welfare and Institutions Code sections 827 and 827.9 identify certain persons or agencies that are entitled to inspect juvenile court records, and Welfare and Institutions Code section 827, subdivision (a)(1)(*O*) extends that right to "[a]ny other person who may be designated by court order of the judge of the juvenile court upon filing a petition." "Confidentiality cannot always be honored. For example, where the principle of confidentiality conflicts with a defendant's constitutional rights of confrontation and cross-examination, it must give way." (*In re Keisha T., supra,* 38 Cal.App.4th at p. 231.) In such cases, a criminal defendant's interest in obtaining information in aid of effective cross-examination furnishes the appropriate standard by which limitations on the principle of confidentiality are to be measured. (*Foster v. Superior Court* (1980) 107 Cal.App.3d 218, 229.)

It does not follow that a defendant is entitled to full disclosure of another's juvenile court records simply because that other person was the victim or a witness to the

[1] Plaintiff further sought relief from the judgment of conviction by means of petition for writ of habeas corpus, arguing, among other things, that his trial attorney had been ineffective in failing to seek or obtain disclosure of David H.'s juvenile court records. (*In re Craig*, A110553.) We denied the petition, summarily, on July 27, 2005. A summary denial is not a conclusive decision on the merits, and therefore has no preclusive effect on plaintiff's ability to raise the issue again. (*In re Swain* (1949) 34 Cal.2d 300, 303-304; *People v. Pacini* (1981) 120 Cal.App.3d 877, 883, fn. 1.)

crimes of which the defendant was accused or convicted. "An accused is 'not entitled to inspect material as a matter of right without regard to the adverse effects of disclosure and without a prior showing of good cause' [citation], and 'the court retains wide discretion to protect against the disclosure of information which might unduly hamper the prosecution or violate some other legitimate governmental interest.' " (*Foster, supra,* 107 Cal.App.3d at pp. 229-230.) "In determining whether to authorize inspection or release of juvenile court records, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public. The court must permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution." (Cal. Rules of Court, rule 1423(b).) The petitioner bears the burden of identifying the records being sought, and establishing that they are relevant to the purpose for which they are being sought. (Cal. Rules of Court, rule 1423(c).) In addition, there should be no release of any record that would not be discoverable but for the fact that it is contained in the juvenile court files. Welfare and Institutions Code section 827 is not a means of extending the reach of the party seeking disclosure to records that generally would not be available to that party.

A showing that would be sufficient to establish good cause for pretrial disclosure of juvenile court files may not be sufficient to establish good cause for posttrial disclosure. Although a petition for disclosure is not, technically, discovery, the principles distinguishing pretrial and posttrial discovery mandate the conclusion that a defendant's interest in obtaining information that will aid in attacking a judgment of conviction is substantially less than the defendant's interest in obtaining information to prevent the judgment in the first instance. "[N]othing in cases addressing the right to pretrial discovery [citations] suggests that similar rights continue *after* the opportunity for defense has been provided, the conviction has been entered, and the presumption of innocence has been overcome." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1258

(*Gonzalez*).)[2] "Indeed, the federal Constitution does not confer a general right to criminal discovery [citation] and does not mandate the full panoply of pretrial rights in collateral efforts to overturn a final conviction [citation]." (*Ibid.*) "[T]here is no postconviction right to 'fish' through official files for belated grounds of attack on the judgment, or to confirm mere speculation or hope that a basis for collateral relief may exist. The initial burden of proving guilt beyond a reasonable doubt is on the prosecution, and the panoply of rights accorded an accused person prior to his conviction supports the presumption that he is innocent. Different considerations apply, however, to collateral review of a final criminal judgment. For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence; *defendant* thus must undertake the burden of overturning them. Society's interest in the finality of criminal proceedings so demands, and due process is not thereby offended. [Citations.] The state may properly require that a defendant obtain some concrete information on his own before he invokes collateral remedies against a final judgment." (*Id.* at pp. 1259-1260.)

Here, plaintiff made an adequate showing of good cause for the disclosure of documents establishing that David H. had suffered a juvenile adjudication that he had committed a crime or crimes of moral turpitude. There was evidence that he did in fact have a criminal history. Counsel also established a legitimate reason for needing the evidence. The complaining witness testified at trial, his credibility was in issue and he was subject to impeachment with prior juvenile adjudications that he had committed a felonies involving moral turpitude. (See *People v. Lee* (1994) 28 Cal.App.4th 1724, 1739-1740.) The evidence, and the fact that plaintiff's trial attorney did not obtain or use it, provides grounds for a collateral attack of the judgment on the grounds of the ineffective assistance of counsel. In sum, plaintiff's showing was sufficient to trigger a duty in the juvenile court to review its records for evidence of adjudications that could have been used to impeach David H. The juvenile court, however, was not required to

[2] After *Gonzalez*, *supra*, 51 Cal.3d 1179, the Legislature enacted Penal Code section 1054.9, which confers some statutory postconviction discovery rights on certain defendants. Penal Code section 1054.9 does not affect the present case.

fish through its files for some other basis for attacking the judgment or to disclose any additional matter on the chance that plaintiff might be able to develop some other evidence or argument that his trial counsel was ineffective.

No particular procedure for reviewing the juvenile court's order has been established. The method of review will vary depending on the petitioner's reason for requesting the files and whether the juvenile court has denied the petition. In a case such as this, it is appropriate for the appellate court to conduct its own in camera review of the juvenile court files. We do not, however, consider the petition de novo. Our review of the juvenile court's order is limited to determining whether the court abused its discretion. (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1541.) And, in conducting that review, we are mindful that the juvenile court is vested with exclusive authority to determine the extent to which juvenile records may be released to third parties. (*In re Keisha T., supra,* 38 Cal.App.4th at p. 232.)

We have conducted the review, and find no abuse of discretion in the juvenile court's rulings.

DISPOSITION

The orders are affirmed.

_____
STEIN, Acting P. J.

We concur:

_____
SWAGER, J.

_____
MARGULIES, J.